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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

**PETITION FOR RECONSIDERATION OF
RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc., ("RCN"), by counsel, pursuant to 47 C.F.R. § 1.429, hereby files its Petition for Reconsideration of the Commission's November 5, 1999 *Third Report and Order* in this docket.¹ RCN seeks reconsideration of the Commission's decision not to include operator services and directory assistance ("OS/DA") in the national list of unbundled network elements ("UNEs") that incumbent local exchange carriers ("ILECs") must offer to competitors under the standards of the Telecommunications Act ("Act").² RCN believes that operator services should be included in the national list of required elements because in those locations where operators are the alternative routing for emergency 911 calls, the unavailability of local ILEC operators to expeditiously and efficiently route emergency calls to PSAPs ("Public Safety Answering Points") would significantly impair competitors' ability to offer local exchange service. Both operator services and directory assistance should be available as unbundled elements because they

¹ *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Provisions of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("Order").

² *Id.*, ¶¶ 438-64.

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promote price competition for local exchange service without which competitors' ability to provide that service would be impaired.

I. BACKGROUND

In its *First Report and Order* in the docket, the Commission determined that a new entrant's ability to provide competing local exchange service would be significantly impaired under Section 251(d)(2)(B) of the Act if the ILECs were not required to provide access to its OS/DA. The U.S. Court of Appeals upheld this ruling, and the Supreme Court expressly affirmed the designation of OS/DA as an element as "eminently reasonable."³

The Court remanded the matter to the Commission, however, to revise the standard by which the unbundling obligations of the Act are determined. On remand, the Commission set the national list of UNEs, but determined that where ILECs provide customized routing, lack of access to the ILECs' unbundled OS/DA does not materially diminish a requesting carrier's ability to offer telecommunications.⁴ Unless the Commission's decision not to require ILEC unbundling of OS/DA is modified to make it available nationally, public safety will be at risk and price competition for local exchange service will be in jeopardy. Moreover, as will be discussed, the unavailability of OS/DA will significantly impair competitive local exchange carriers' ("CLECs") ability to provide local exchange service.

³ *Iowa Utils. Bd. v. FCC*, 119 S. Ct. 721, 733-34 (1999); Order at ¶ 438.

⁴ Order at ¶ 441.

II. OPERATOR SERVICES UNBUNDLING IS NECESSARY FOR PUBLIC SAFETY

As the Order discusses, ILEC and third-party directory assistance providers have regional or national call centers.⁵ By contrast, ILEC operator services call centers tend to serve a more localized area.⁶ Although ILEC operator services and directory assistance call centers can be combined, often they are not.⁷ While the days of reaching a local operator who knows all the telephone subscribers in a town are long gone, local operators can and do have a familiarity with the geography in which they serve. Familiarity with an area can be critical in an emergency and adds an extra layer of security to the public.⁸

New York City, the City of Philadelphia and scores of local and state authorities require that, emergency 911 calls must be routed to a local exchange carrier's operator if a connection to the appropriate PSAP cannot be made.⁹ In such a case, it is not sufficient for the operator to hang up and tell the caller to dial 911 – that is how they reached the operator in the first place.¹⁰ Further, if the operator is located at a national call center in a distant city, the operator may not be sufficiently

⁵ See *id.* at ¶ 458.

⁶ Bell Atlantic Aug. 30, 1999 Ex Parte.

⁷ *Id.*

⁸ See Order at ¶ 458 (distant operators may be unfamiliar with local place names, or may not have needed language skills to serve ethnic communities in local areas).

⁹ See, e.g., N.Y. Comp. Codes R. & Regs. tit. 16, § 603.2 (requiring continuous access to local assistance operators capable of connecting emergency calls); Exhibit A (reflecting City of Philadelphia's requirement that in the event of 911 tandem failure, LEC recording must tell callers to dial an operator).

¹⁰ See Order at ¶ 459 (some commenters indicated that national call centers that cannot connect to local PSAPs simply tell callers to hang up and dial 911).

familiar with the caller's community to contact emergency services directly. If the caller cannot provide enough information about their location (e.g., if a child calls or the caller resides in an ethnic community and has limited English fluency), then the caller is at even greater risk when they cannot connect to a local PSAP or a local operator.

The Commission did not account for differences in PSAP routing when declining to compel OS/DA unbundling. The Commission rejected public safety arguments that OS/DA should be unbundled because national operator services have limited ability to connect to local public safety answering points ("PSAPs"). While the Commission acknowledged that "issues of public safety are of paramount concern," it determined that the ability or inability to connect OS/DA calls to a PSAP does not impair the ability of a competitor to offer local exchange services.¹¹ According to the Commission, an OS/DA provider's inability to connect to a PSAP does not constitute a competitive disadvantage because (1) the record showed that at least one OS/DA provider takes pains to obtain the direct dial number of the PSAP for different locations in advance, or calls emergency services directly if the caller can identify their location; and (2) the record was not clear that ILEC remote OS/DA call centers have the capability themselves to connect to all PSAPs.¹²

The Commission failed to recognize, however, that operators serving some communities must be able to respond to emergencies themselves without recourse to the PSAP. The unavailability of unbundled ILEC operator services denies new entrants the ability to compete in those areas where the operator is the alternative routing for 911 calls. New entrants as a whole are

¹¹ *Id.* at ¶ 459.

¹² *Id.* at ¶ 460.

not in a position to offer local operator services in all locations in which they serve. New entrants as a whole also tend to rely on the ILEC's contractual and operational arrangements with PSAPs both as a matter of convenience and economics. In such cases, the availability of a local ILEC operator, and not a national third-party operator services call center, is important to public safety. If the ILEC is the only operator services provider that can meet the needs of the community in an emergency through use of local operators, then the CLEC is denied the ability to compete in that community.¹³ Some day when the ILECs have lost significant market share and are no longer dominant local exchange service providers in the market they serve, viable alternatives to the ILECs operators would develop. Even many independent telephone companies rely on Bell Operating Companies to provide operator services as they lack the size and the scope of an RBOC to provide economically viable operator services.

As its abbreviated name implies, RCN is a predominantly "Residential Communications Network." Residential customers demand more local information than business customers. Indeed, in some cases the residential telephone provider is an end user's exclusive link to the community.

A CLEC cannot serve residential customers if it is denied operator services that may be essential for a community's public safety.¹⁴

¹³ Although the Order allows that CLECs can still obtain operator services and directory assistance services from ILECs on a non-discriminatory basis under Section 251(c)(3), designation of OS/CA as a required UNE is still necessary. Unless classified as a UNE, CLECs in some areas will be forced to rely on ILEC OS/DA that are not priced at Total Element Long Run Incremental Cost. This would not further the Commission's goal of promoting CLEC differentiation of service through price competition. Order at ¶ 464.

¹⁴ See RCN Comments at 20 (CLECs cannot meet customer expectations without unbundled operator services).

III. UNBUNDLING DIRECTORY ASSISTANCE SERVICES WILL CREATE EFFICIENCIES PROMOTING PRICE-BASED LOCAL COMPETITION

The Commission should also reconsider its decision to omit directory assistance services from the list of UNEs. RCN's trunk groups to ILECs are capable of double duty: they serve to carry traffic and can also support interconnection to the ILEC's directory assistance services. Obviously, there are tremendous efficiencies possible for CLECs to obtain directory assistance services over facilities already in place without building additional facilities. The Commission said it was not persuaded by the commenters that indicated that purchasing long haul facilities to reach directory assistance call centers was not cost effective as compared to relying on local loops.¹⁵ Nevertheless, it is hard to see how price competition for local services is fostered by compelling CLECs to build unnecessary facilities or to purchase ILEC directory services at non-Total Element Long Run Incremental Cost-based rates because that service is not a required UNE. The Commission's determination that CLEC reliance on third-party directory assistance is not cost effective is erroneous. Directory assistance services should be reinstated as a UNE on a national basis.

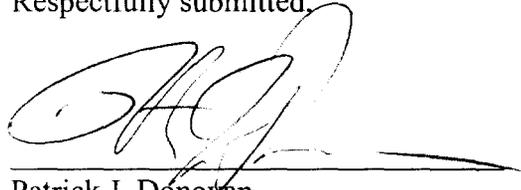
¹⁵

Order at ¶ 454.

IV. CONCLUSION

For the above reasons, RCN respectfully requests that the Commission reconsider its *Third Report and Order* and classify OS/DA as an network element that ILECs must unbundle and offer to CLECs under the pricing standards in the Telecommunications Act and the Commission's Rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. J. Donovan', is written over a horizontal line.

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Dated: February 17, 2000

EXHIBIT A

SECTION 2 - GENERAL RULES AND REGULATIONS (Cont'd)

2.11 9-1-1 TELECOMMUNICATIONS SERVICE (Cont'd)

(N)

2.11.3 E-9-1-1 Trunk Group Failure or 9-1-1 Tandem Failure

In the event of a failure of all the trunk groups between the Allegiance Telecom switch(es) and the 9-1-1 tandem, or a failure of the 9-1-1 tandem switch, the following procedure will be followed:

The local 10 digit telephone number of the default 9-1-1 PSAP has been programmed into the Allegiance Telecom central office switch. In those PSAPs where 10 digit telephone number access to the default 9-1-1 PSAP is not available, the Customer must dial 0 to reach the operator platform. In the event of a trunking failure, calls usually routed to the 9-1-1 trunks will be routed to the ten digit telephone number of the default PSAP. If the Allegiance personnel via local alarm observe the trunking failure, the alternate routing plan will be invoked along with immediate attempts to isolate and restore the failure. Notification will be made to the local 9-1-1 agency designated notification point. If Allegiance is notified of the failure by the 9-1-1 tandem or local 9-1-1 agency, the Allegiance operations center will immediately invoke the alternate routing plan and assist as needed to isolate and restore service.

In the event of a failure of all of the trunk groups between Allegiance Telecom switch(es) and the 9-1-1 tandem, or a failure of the 9-1-1 tandem switch, the following procedures will be followed in the City of Philadelphia. The Allegiance switch is programmed to play the following announcement which has been approved by the City of Philadelphia 9-1-1 authorities: "Allegiance Telecom - 9-1-1 - all circuits are busy now. Please hang up, then dial your operator."

2.11.4 Switch Isolation

In the event of a complete switch failure and isolation from the 9-1-1 and public switched telephone networks, the following procedure will be followed:

- 1) Upon determination of a switch failure and isolation, Allegiance personnel will invoke the Lucent Emergency Recovery (EDR) process in an effort to restore the switch to service as soon as possible.
- 2) Notification of the failure condition and restoral status will be made to the local 9-1-1 agency designated notification point.
- 3) All efforts will be made to restore the failure quickly and return all service to normal.

(N)